IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 1501 of 1986
Date of decision : 4.4.2007

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Parties Name

The General Manager, Punjab Roadways,
Jalandhar and another

..... Petitioners

vs.

Harish Chander

.....Respondent

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Suveer Sehgal, Additional Advocate General,
Punjab for the petitioner

None for the respondent.

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S.N. Aggarwal, J.

Harish Chander-respondent was working as a Conductor with the petitioners. On 16.9.1982, he filed an application under Section 15 (2) of the Payment of Wages Act, 1936 (in short the 'Wages Act'), for a direction to the petitioners for refund of the wages deducted illegally. The petitioners in the written statement took the plea that the orders of withholding the increments of the respondent have been passed in accordance with law and therefore, the respondent was not entitled to the wages because of those orders. The following orders were set up by the petitioners :-

S.No.	Order No. and date	Punishment imposed
1.	5866/TA dated 26.9.1978	Stoppage of 2 increments with cumulative effect.
2.	5832/TA dated 26.9.1978	Stoppage of 2 increments with cumulative effect.
3.	7328/TA dated 9.11.1978	Stoppage of 3 increments with cumulative effect.
4.	506/ECC dated 21.3.1977	Stoppage of 4 increments with cumulative effect.
5.	583/ECC dated 20.6.1980	Stoppage of 6 increments with cumulative effect.

After the parties led the evidence, the learned trial Court reached the conclusion that the orders shown at Sr.Nos. 4 and 5 i.e. orders No. 506/ECC dated 21.3.1977 and 583/ECC dated 20.6.1980 were passed in accordance with law. However, the other three orders No. 5866/TA dated 26.9.1978, 5832/TA dated 26.9.1978 and 7328/TA dated 9.11.1978 were held to be illegal and were set aside vide order dated 2.1.1984. The appeal filed by the petitioners was also dismissed.

Hence, the petition.

The submission of the learned counsel for the petitioners was that this application filed by the respondent under Section 15 (2) of the Wages Act was barred by limitation. It was also submitted that statutory appeal was not filed by the respondent and therefore, the application under Section 15 (2) of the Wages Act was not maintainable.

These submissions have been considered.

No doubt, the filing of statutory appeal was one of the remedies available to the respondent, but the non-filing of the

statutory appeal does not debar the filing of the application under Section 15 (2) of the Wages Act by the respondent against the petitioners to assert that due procedure was not followed while passing the impugned orders or that these orders were illegal.

The perusal of the file reveals that proper procedure was not followed, while passing the three orders dated 20.9.1978, 20.9.1978 and 9.11.1978.

The next submission of the learned counsel for the petitioners was that application filed by the respondent under Section 15 (2) of the Wages Act was barred by limitation. Under Section 15 (2) of the Wages Act, such an application can be filed within 12 months. The impugned orders were passed on 26.9.1978, 26.9.1978 and 9.11.1978, while application under Section 15 (2) of the Wages Act was filed on 16.9.1982. Hence, this application was barred by limitation.

This submission has been considered. The provisions of Section 15 (2) of the Wages Act reveals that the application could be filed within 12 months from the date on which the deduction from the wages was made or from the date on which the payment of wages was due to be made, as the case may be. Now, the question arises, as to when the wages were deducted and the period of limitation is to start from that date.

The perusal of the file reveals that no evidence was produced by the petitioners to show if the order dated 26.9.1978 was implemented or not implemented and when its implementation was made or when this order was communicated to the respondent.

There is no presumption as to when this order was made applicable. Therefore, the petitioners have failed to prove if the impugned order dated 26.9.1978 was made effective prior to 12 months from the filing of the application.

Similarly, on 26.9.1978, another order was passed for stoppage of two annual grade increments with cumulative effect. A copy of this order was given to the respondent on 23.8.1979 i.e. after about 11 months after it was passed. The petitioners have failed to prove if this order was made applicable and the payment of wages was withheld, if so, when. Therefore, the date of withholding of the part of salary of the respondent is not proved by the petitioners and therefore, the date of starting point of limitation is not proved by them.

The same situation governs the order dated 9.11.1978.

Therefore, not only these orders have been passed without following due procedure but also there is no evidence when these orders were made effective. Therefore, the application filed by the respondent is not barred by limitation.

No merits. Dismissed.

(S.N.Aggarwal)
Judge

4.4.2007
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